

HON. JAMES A. HAYNES  
DISTRICT COURT JUDGE  
DEPARTMENT TWO



STATE OF MONTANA  
TWENTY-FIRST JUDICIAL DISTRICT  
RAVALLI COUNTY

RAVALLI COUNTY COURTHOUSE  
205 BEDFORD STREET, SUITE B  
HAMILTON, MONTANA 59840  
PHONE: (406) 375-6790  
FAX: (406) 375-6785

June 22, 2006

Randi Hood, Chief Public Defender  
Office of the Public Defender  
44 West Park Street  
Butte, MT 59701

**RECEIVED**

JUN 26 2006

OFFICE OF THE STATE  
PUBLIC DEFENDER

RE: Comment on Public Defender Standards

Dear Randi:

Thank you for your June 9th letter inviting comments on the proposed Public Defender Standards. It appears your office and the commission have put in considerable time. My initial thoughts:

Page 3, ¶ III.A.2. "Public defenders, contract counsel and assigned counsel. . . ."

Are there two categories of appointed counsel (PD, contract) or three categories (PD, contract, assigned)? If there are two categories, or three categories, where are they clearly defined?

Page 4, ¶ III.C.2. ". . . and counsel's employment has not been terminated for cause. . . . Completion of a client's case shall not be required, if counsel is physically unable . . ."

- a.) Clarify by adding one of the following words current, appointed or assigned before 'counsel.'
- b.) Add the word 'good.' . . . terminated for good cause. "Good cause" is defined on p.13., ¶ IV.B.4. 'Cause' alone is undefined, and creates an inconsistency.
- c.) Why may current counsel discontinue for physical inability only? Current counsel should be able to discontinue representation if under the totality of reasons, current counsel satisfies the Regional Public Defender that current counsel can no longer competently

serve the client with diligence and promptness. Otherwise, current counsel who takes another new and demanding employment position within the same county could unilaterally be directed to continue representation.

Page 4, III.D. **Termination of Representation** -- Perhaps this paragraph should be relabeled Termination of Employment, and moved into ¶ IV Administration. It blends and confuses the concepts of Termination of Employment with Termination of Representation. The clause "by the parties" at the end of the first sentence tells nothing about who 'the parties' are. Is the Defendant included? Why would a Defendant be included in employment decisions? I suggest reworking this paragraph.

It is important to consider adding two additional and related paragraphs headed: (a) Assignment of Representation and (b) Substitution of Representation.

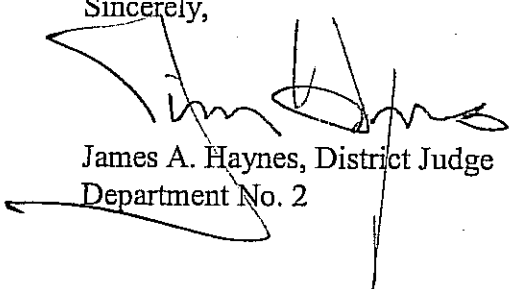
- (a) Assignment of counsel. This should be an internal administrative function, in my view, without any right of the client to choose a particular attorney. In any event, the initial assignment of counsel protocol should be stated.
- (b) Substitution of counsel. The standard for substitution of court appointed counsel is set in caselaw:

Make adequate inquiry into a defendant's complaint and determine whether a conflict is so great as to result in total lack of communication.

Would it be best to adopt and state this standard, for all to read, at the outset? Likely, to do so will avert a few -- but not all -- district court hearings on this issue.

I saw no need to carefully review the IV. ADMINISTRATION standards onward, trusting that others have closely scrutinized these internal workings.

Sincerely,

  
James A. Haynes, District Judge  
Department No. 2

JAH/bk



State of Montana  
**DISTRICT COURT**

*Seventh Judicial District*  
*Richard A. Simonton, District Judge*

EXHIBIT 2

P.O. Box 1249  
Glendive, Montana 59330  
Office: (406) 377-2666  
Fax: (406) 377-7280

James Glover, RPR  
Court Reporter  
Mitzi Barney  
Court Administrator

June 27, 2006

**RECEIVED**

JUN 27 2006

**OFFICE OF THE STATE  
PUBLIC DEFENDER**

Randi Hood  
Chief Public Defender  
Public Defender Commission  
44 West Park Street  
Butte, Montana 59701

RE: Proposed Standards

Dear Randi,

At the risk of being perceived as negative rather than interested in a system of fairness, I submit the following regarding the proposed Public Defender Standards:

In general -

1. I foresee the regional public defenders ultimately becoming almost exclusively administrators. The paper work, training for public defenders and contract lawyers, as well as the travel and supervision will be consuming all of their time.

2. The State has created a new bureaucracy to resolve complaints that I understand were localized and could have been resolved as proposed by the Appellate Defender Commission some time ago.

3. The system has not yet begun representing clients, and already the proposed increase in compensation is 33 1/3 percent, from \$60 per hour to \$80 per hour. A contracting lawyer doing nothing else could earn \$160,000 per year, which is more than the chief justice, attorney general, any county attorney, and any other participant in the criminal justice process. This is not parity, it is a misuse of taxpayer dollars.

4. Middle-income earners must practically and realistically assess whether to proceed

with litigation because they are limited by the size of their pocket book. No such restriction is imposed upon eligible defendants. And since they, rather than the attorney, decide how far to go, they can require that these cases be worked indefinitely. If the public defender does not agree with the client then, as I read the proposed standards, the public defender withdraws and a public defender from a different region is assigned to the case. Where is the equality of justice under those circumstances?

5. I disagree with the statement that each regional office is a separate law firm. What we actually would have would be a state-wide law firm (The Montana Public Defender) with offices in eleven regions. Each regional office, however, is under the supervision and authority of one chief public defender and receives its funding as a portion of one general budget; each region is subject to the same standards and rules and qualifications.

6. How can there not be a conflict of interest when a regional public defender is responsible for multiple appointments of counsel in the same case whose interests may be competing? For example, we have a youth in need of care (abuse and neglect case) where there are five children with one mother and four different fathers. Counsel must now be assigned to each parent and the children, even though there is no intention of terminating parental rights, and each father's claim may conflict with the mother's claim. How many regions must participate in the appointment of counsel? Are six regional offices - actually branch offices of the State Public Defender - going to be able to truly avoid any potential conflict of interest?

7. In a criminal defense situation where the regional public defender determines eligibility for services and then decides to represent the client, assuming there is a conviction and the defendant's sentence is suspended or deferred upon conditions, how is the amount of state reimbursement for attorney's fees going to be calculated since the regional defender receives a monthly salary. As you know, reimbursement of attorney's fees is a typical condition of such sentences.

8. Detailing the standards as you do and requiring that they be followed encourages claims of ineffective assistance of counsel and malpractice.

Specific concerns:

1. III B. - I remember there was a difference of opinion in the Appellate Defender Commission as we considered "when" representation should first be available. Your proposal makes it available as soon as a person is under investigation. Thus, without any determination of eligibility, any person under investigation for any crime, even in the beginning stages of the investigation, can request the assistance of a public defender. Time and money will be spent during this phase even though criminal charges may never be filed. Do you really think you are going to be able to collect reimbursement if it is determined that the client is not eligible for services?

The same paragraph makes counsel available "when the interests of justice require

representation". How vague is that? Who makes the determination? Is there no end to the money that is going to fund this system?

2. III E. - If trial strategy is the exclusive province of a regional public defender, does that make the contract lawyer subject to the regional public defender's management of a case? If the regional public defender disagrees with the strategy of a public defender or contract attorney, whose decision is final? Do you really think you'll get contract lawyers under this condition? Will the contract lawyer's malpractice carrier provide coverage?

3. IV A.4. - While I agree that inmates have a right to unmonitored and unrecorded telephone calls with their lawyer, who is going to monitor that system so that it is not abused with calls to other than lawyers? Will the corrections officials actually dial the call for the inmate?

4. VI 1. b - Since the state requires 15 hours of continuing legal education per year, why are public defenders required to attend 20 hours of continuing legal education? Undoubtedly the training expense will be borne by the state to allow the defenders to obtain their CLE credits without charge (as is done with county attorneys and judges).

5. VI 4. C(5) - As a condition to bail, the Court often requires that the defendant maintain contact with his lawyer. If the lawyer feels it is a violation of confidentiality to report that his client is not maintaining contact, how is the Court to determine whether there is compliance? How will anybody determine whether the defendant has absconded and will not appear for trial? As an officer of the Court, a public defender has responsibilities to the Court.

6. VI 4. f(2)(d) - Since the criminal records of witnesses are normally not admissible and may, in fact, be confidential criminal justice information, why should defendants be entitled to that information?

7. VIII 1. - Defenders are to have an office, library, and equipment comparable to the prosecutor's office. From what I have seen so far, those facilities and equipment are going to exceed what is available to most prosecutors. As you know, prosecutors are paid part by the state and part by the county. Dawson County does not have an up-to-date law library - no books have been ordered for over four years, and there are no computers with Westlaw, Lexus/Nexus, or any publications for the county attorney, or anyone, to use. The counties, so far as I know, do not provide cars, raspberries, and cellular phone systems to its prosecutors. Counties are limited from doing so by their budgets. Again, that does not appear to be the case for the public defenders.

8. IX 4. - Obviously, any consideration of pro bono representation, at least in part, is dead. A contract lawyer working only half time would earn \$80,000 per year, exceeding even the salary of the regional defender. Granted, a contract lawyer will have overhead expenses, but another 300 hours of appointments will probably cover those, especially if he or she is working only part time.

9. On page 44, paragraph j - Since you have already screened the public defenders

and contract attorneys for competence, is it necessary that appellate briefs or substantial motions be reviewed by yet another lawyer? I can't imagine what the reaction would be from a client who has paid for a privately retained lawyer and is hit with another bill for review of that lawyer's work.

10. On page 50, II d,e - Isn't it a little ironic that counsel is needed for a youth because a youth does not have the judgment of an adult and yet counsel cannot substitute his or her judgment for that of the judgment-deficient youth? Should defenders be advised to ensure that children do not waive appointment of counsel when such waiver is specifically provided by law?

11. On page 57, I.B. - While visiting treatment facilities would give defense counsel a better understanding of what is available at those facilities, judges and prosecutors have been dealing with involuntary commitments for years without a requirement that they visit those facilities. Should this be permissive rather than mandatory? Or should it also be mandatory for prosecutors and judges as well?


12. Defense counsel advising the client not to cooperate during the involuntary commitment process would only delay the treatment that, in most cases, is required. In these types of proceedings, is it necessary to take such an adversarial position that we lose sight of what is best for the client?

13. On page 66, item T - Maybe we do things differently in Eastern Montana than in other parts of the state, but I have yet to hear of an appointed counsel monitoring Warm Springs' treatment and services provided to a client. Isn't there already an advocate who does that?

Contrary to how I may come across, I do appreciate the huge task faced by the commission in creating a public defender system. As a former prosecutor, defense attorney, and now judge, however, I am concerned that you are not trying to achieve parity with prosecutors, but superiority to them. I am concerned that the system is going to cost much more than what was budgeted and many times more than the cost of providing services previously. The use of experts and sentencing specialists would normally be resources outside the reach of the ordinary citizen.

If adopted as proposed, we won't be fixing a localized problem; we will be creating a much larger problem for the state.

Very truly yours,

  
RICHARD A. SIMONTON  
District Judge

# OFFICE OF STATE PUBLIC DEFENDER

EXHIBIT 3



BRIAN SCHWEITZER  
GOVERNOR

RANDI HOOD  
CHIEF PUBLIC DEFENDER

## STATE OF MONTANA

Phone: (406) 496-6080  
Fax: (406) 496-6098

44 WEST PARK STREET  
BUTTE, MONTANA 59701

June 21, 2006

Montana District Court Judges and Staff  
Montana District Clerks of Court  
Montana Limited Court Judges and Staff  
Office of the Supreme Court Administrator

To Whom It May Concern:

On July 1, 2006, as per the Montana Public Defender Act, Judges will appoint the Office of the State Public Defender to assign legal counsel for a person charged with a crime or with certain civil offenses. To implement this assignment, the following information is included with this letter:

### **APPOINTMENT OF STATE PUBLIC DEFENDER FORM (Form 0001)**

This form will provide our office with information necessary to contact a defendant. Please fill out this form and send it to the Region Office that is assigned to your county. Our Regional Deputy Public Defenders may have already contacted you about the most effective way to provide this information to them, however; the Region Contact Information (Attachment 2 to Form 001) provides you with several contact options.

### **COUNTIES BY REGION (Attachment 1 to Form 0001)**

This attachment will tell you which region you are in.

### **REGION CONTACT INFORMATION (Attachment 2 to Form 0001)**

This attachment provides contact information by region.

All of this information will be loaded on FullCourt, available on our website <http://www.publicdefender.mt.gov/forms/AppointForm.pdf>, and available in "paper copy" form at each of our regional offices. On another note, we will be placing paper copies of indigency forms in all courthouses and jails. If anyone has any questions about this process, please call our main office at 406-496-6080.

Sincerely,

A handwritten signature in dark ink, appearing to read "Randi Hood".

Randi Hood  
Chief Public Defender

CC: Regional Deputy Public Defenders

**APPOINTMENT OF STATE PUBLIC DEFENDER**

Court Name: \_\_\_\_\_

I hereby appoint the Office of the State Public Defender to represent:

Defendant Name: \_\_\_\_\_

Case Number: \_\_\_\_\_

Charges: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Defendant is in custody in the \_\_\_\_\_ County Jail.

Defendant's Address and Phone number is: \_\_\_\_\_

\_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Judge's Name: \_\_\_\_\_

**For Regional Office Use Only**

Assigned Attorney _____	_____ FTE	_____ Contracted
Regional Authorization _____	Date _____	
Assigned OPD# _____	Entered SABHRS _____	



Counties by RegionRegion 1 – Kalispell

Flathead  
Lake  
Lincoln  
Sanders

Region 2 – Missoula

Mineral  
Missoula  
Ravalli

Region 3 – Great Falls

Cascade  
Glacier  
Pondera  
Teton  
Toole

Region 4 – Helena

Broadwater  
Jefferson  
Lewis & Clark

Region 5 – Butte

Beaverhead  
Deer Lodge  
Granite  
Madison  
Powell  
Silver Bow

Region 6 – Havre

Blaine	Phillips
Chouteau	Liberty
Valley	Hill

Region 7 - Lewistown

Fergus  
Golden Valley  
Judith Basin  
Meagher  
Musselshell  
Petroleum  
Wheatland

Region 8 - Bozeman

Gallatin  
Park  
Sweet Grass

Region 9 - Billings

Big Horn  
Carbon  
Stillwater  
Yellowstone

Region 10 – Glendive

Dawson	Wibaux
McCone	Daniels
Prairie	Sheridan
Richland	Roosevelt

Region 11 – Miles City

Carter	Garfield
Custer	Rosebud
Fallon	Treasure
Powder River	

**REGION CONTACT NUMBERS****REGION 1: (Kalispell)**

Contact Name: John Putikka  
Address: 100 Financial Drive  
Kalispell, MT 59901  
Phone Number: (406) 471 6415  
Fax Number:  
Email: [jputikka@mt.gov](mailto:jputikka@mt.gov)

**REGION 2: (Missoula)**

Contact Name: Ed Sheehy  
Address: 610 North Woody  
Missoula, MT 59802  
Phone Number: (406) 523-5140  
Fax Number: (406) 523-5141  
Email: [esheehy@mt.gov](mailto:esheehy@mt.gov)

**REGION 3: (Great Falls)**

Contact Name(s): Kristina Neal  
Address: 415 2<sup>nd</sup> Avenue North #110  
Great Falls, MT 59401  
Phone Number: (406) 454-6858  
Msg. Phone: (406) 454-6866  
Fax Number: (406) 454-6862  
Email: [kneal@mt.gov](mailto:kneal@mt.gov)

**REGION 4: (Helena)**

Contact Name: Jeremy Gersovitz  
Address: 228 Broadway, Room 302  
Helena, MT 59601  
Phone Number: (406) 447-8213  
Fax Number: (406) 447-8421  
Email: [jgersovitz@mt.gov](mailto:jgersovitz@mt.gov)

**REGION 5: (Butte)**

Contact Name(s): Sherry Staedler  
Address: P.O. Box 122  
Anaconda, MT 59711  
Phone Number: (406) 563-6586  
Fax Number: (406) 563-4258  
Email: [sstaedler@mt.gov](mailto:sstaedler@mt.gov)

**REGION 6: (Havre)**

Contact Name(s): Dan Boucher  
Address: 415 4<sup>th</sup> Avenue  
P.O. Box 268  
Havre, MT 59501  
Phone Number: (406) 265-4373  
Fax Number: (406) 265-8501  
Email: [dboucher@mt.gov](mailto:dboucher@mt.gov)

**REGION 7: (Lewistown)**

Contact Name(s): Douglas Day  
Address: 505 West Main Str., Ste 418  
Lewiston, MT  
Phone Number: (406) 366-3643  
Fax Number:  
Email: [dday@mt.gov](mailto:dday@mt.gov)

**REGION 8: (Bozeman)**

Contact Name: Peter Ohman  
Address: 502 South 19<sup>th</sup>, Ste 211  
Bozeman, MT 59718  
Phone Number: (406) 582-2450  
Fax Number: (406) 582-2451  
Email: [pohman@mt.gov](mailto:pohman@mt.gov)

**REGION 9: (Billings)**

Contact Name: Carl George Debelly, Jr.  
Address: 207 North Broadway, Ste 201  
P.O. box 459  
Billings, MT 59101  
Phone Number: (406) 256-6861  
Fax Number: (406) 256-6899  
Email: [cdebelly@mt.gov](mailto:cdebelly@mt.gov)

**REGION 10: (Glendive)**

Contact Name: Ali Moulton  
Address: 100 ½ South Merrill, Ste 3  
Glendive, MT 59330  
Phone Number: (406) 377-1558  
Fax Number: (406) 377-4710  
Email: [amoulton@mt.gov](mailto:amoulton@mt.gov)

**REGION 11: (Miles City)**

Contact Name: Matt Wald  
Address: 11 South 7<sup>th</sup> Street  
Miles City, MT 59301  
Phone Number: (406) 679-0890  
Fax Number: (406) 232-7616  
Email: [mwald@mt.gov](mailto:mwald@mt.gov)

**CENTRAL OFFICE (Butte)**

Phone Number: (406) 496-6080  
Fax Number: (406) 496-6098

### INDIGENCY QUESTIONNAIRE

I have been charged with a criminal offense and the office of the State Public Defender has been appointed to represent me. The Crime (s) I have been charged with is:

\_\_\_\_\_

Co-Defendants:

\_\_\_\_\_

I am free to hire a private attorney at any time at my own expense. However, I believe I am unable to afford an attorney.

I understand that in order for my appointed attorney to continue representing me, that representation will be based on the information in this questionnaire. The Regional Deputy Public Defender will make a decision whether I am eligible for continued representation.

#### Personal Information:

1. Name: \_\_\_\_\_ D.O.B. \_\_\_\_\_
2. Address: \_\_\_\_\_
3. Home Phone \_\_\_\_\_ Cell Phone \_\_\_\_\_ Message Phone \_\_\_\_\_
4. Marital Status: Married: \_\_\_\_\_ Single: \_\_\_\_\_ Divorced: \_\_\_\_\_
5. Dependents: Spouse: \_\_\_\_\_ Number of Children: \_\_\_\_\_ Other (specify) \_\_\_\_\_

#### Employment Information:

1. Are you Employed: \_\_\_\_\_ Self Employed: \_\_\_\_\_
2. Employer's Name: \_\_\_\_\_ Phone: \_\_\_\_\_
3. Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_
4. Gross Monthly Income: \_\_\_\_\_ Net Monthly Income: \_\_\_\_\_
5. If unemployed month and year you were last employed? \_\_\_\_\_  
Where: \_\_\_\_\_
6. Any other income? \_\_\_\_\_ (Specify) Monthly \$ \_\_\_\_\_  
(income from all other sources including, support payments, alimony, interest, rent income, social security, disability, public assistance, etc)

#### Spouse's Information:

1. Name: \_\_\_\_\_ D.O.B. \_\_\_\_\_
2. Employer's Name: \_\_\_\_\_ Phone: \_\_\_\_\_
3. Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_
4. Gross Monthly Income: \_\_\_\_\_ Net Monthly Income: \_\_\_\_\_
5. Does Spouse have any other income? \_\_\_\_\_ (Specify) Monthly \$ \_\_\_\_\_  
(income from all other sources including, support payments, alimony, interest, rent income, social security, disability, public assistance, etc)

VERIFICATION

EXHIBIT 14

Under penalty of perjury, I declare that I have examined the above information given by me and to the best of my knowledge and belief, each answer is true and correct. I believe I lack sufficient funds to hire a private lawyer to represent me.

Dated \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

\_\_\_\_\_  
Signature of Applicant

STATE OF MONTANA )

ss

COUNTY OF \_\_\_\_\_ )

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

(SEAL)

\_\_\_\_\_  
Notary Public for the State of Montana

Residing at \_\_\_\_\_ Montana

My Commission Expires \_\_\_\_\_

***FOR REGIONAL OFFICE USE ONLY:***

Other Information:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

serve the client with diligence and promptness. Otherwise, current counsel who takes another new and demanding employment position within the same county could unilaterally be directed to continue representation.

Page 4, III.D. **Termination of Representation** -- Perhaps this paragraph should be relabeled Termination of Employment, and moved into ¶ IV Administration. It blends and confuses the concepts of Termination of Employment with Termination of Representation. The clause "by the parties" at the end of the first sentence tells nothing about who 'the parties' are. Is the Defendant included? Why would a Defendant be included in employment decisions? I suggest reworking this paragraph.

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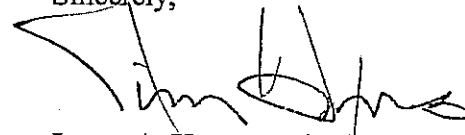
- (a) Assignment of counsel. This should be an internal administrative function, in my view, without any right of the client to choose a particular attorney. In any event, the initial assignment of counsel protocol should be stated.
- (b) Substitution of counsel. The standard for substitution of court appointed counsel is set in caselaw:

Make adequate inquiry into a defendant's complaint and determine whether a conflict is so great as to result in total lack of communication.

Would it be best to adopt and state this standard, for all to read, at the outset? Likely, to do so will avert a few -- but not all -- district court hearings on this issue.

I saw no need to carefully review the IV. ADMINISTRATION standards onward, trusting that others have closely scrutinized these internal workings.

Sincerely,



James A. Haynes, District Judge  
Department No. 2

JAH/bk

Subchapter 1

Organizational Rule

2.69.101. ORGANIZATION OF THE STATEWIDE PUBLIC DEFENDER SYSTEM (1) The organization and function of the statewide public defender system are described in this rule.

(a) History. The statewide public defender system was established by Chapter 449, Laws of Montana 2005. The system is provided for in 47-1-104, MCA.

(b) Structure. The statewide system consists of the following:

(i) the Montana Public Defender Commission. The commission is comprised of eleven members appointed by the Governor.

(ii) the Office of the State Public Defender; and

(iii) the Appellate Defender.

(2) Functions.

(a) Commission. The commission supervises the operations of the chief public defender and the office of the state public defender, as required by 47-1-105, MCA.

(b) Chief Public Defender. The chief public defender administers the office of the state public defender as required by 47-1-201 and 47-1-202, MCA.

(3) Contact Information.

Montana Public Defender Commission, 44 West Park Street, Butte, MT, 59701, telephone (406) 496-6080.

(4) Organization Chart.

AUTH: 2-4-201, MCA

IMP: 2-4-201, MCA



## Subchapter 2

## Procedural Rules and Definitions

2.69.201 PROCEDURES FOR ADOPTING, AMENDING, AND REPEALING AGENCY RULES (1) The public defender commission, for purposes of establishing agency rulemaking procedures, adopts and incorporates by reference attorney general's model procedural rules 1 found in ARM 1.3.102 and 2 through 7 found in ARM 1.3.205 through 1.3.210. A copy of the attorney general's model rules may be obtained by contacting the Attorney General's Office, Justice Building, 215 N. Sanders, P.O. Box 201401, Helena, MT 59620-1401, telephone (406) 444-2026.

AUTH: 2-4-201, MCA

IMP: 2-4-201, MCA

2.69.202 PROCEDURES FOR THE ISSUANCE OF DECLARATORY RULINGS (1) The public defender commission adopts and incorporates by reference attorney general's model procedural rules 22 through 24 and 28 found in ARM 1.3.227 through 1.3.229 and 1.3.233 which set forth the procedures for the issuance of declaratory rulings. A copy of the model rules may be obtained by contacting the Attorney General's Office, Justice Building, 215 N. Sanders, P.O. Box 201401, Helena, MT 59620-1401, telephone (406) 444-2026.

AUTH: 2-4-201, MCA

IMP: 2-4-201, MCA

2.69.203 DEFINITIONS (1) "Applicant" means a person who seeks public defender services.

(2) "Conflict coordinator" means an attorney who coordinates conflict cases.

(3) "Contracted attorney" means an attorney who is not employed by the state, but who is providing public defender services as an independent contractor after having accepted an assigned case from a deputy public defender or from the conflict coordinator.

(4) "Counsel" means a licensed attorney qualified and trained to represent indigent individuals in the courts of the state of Montana.

(5) "Eligible" means that an applicant has been determined to be entitled to the full benefit of public defender services until the court's order requiring the assignment of counsel has been rescinded.

(6) "Nonattorney services" shall include, but not be limited, to pre-approved services rendered by professional and nonprofessional persons considered necessary for the effective representation of indigent clients.

(7) "Regional office" means an office authorized under 47-1-104(2), MCA.

AUTH: 47-1-105, MCA

IMP: 47-1-105, 47-1-111, 47-1-216, MCA

## Subchapter 3

## Determination of Indigency and Eligibility for Public Defender Services

2.69.301 DETERMINATION OF INDIGENCY (1) The office shall prepare forms to capture financial information from an applicant for public defender services.

(2) The office shall distribute the forms to courthouses, jails, and other venues determined appropriate by the office.

(3) The applicant will complete the forms in accordance with instruction provided on the forms and forward them to the appropriate regional office.

(4) The staff of the regional office shall review an applicant's forms and determine whether, based on the provisions of 47-1-111, MCA, an applicant is indigent and qualifies for public defender services. The applicant will be notified of this determination, regardless of outcome.

(5) All information collected on the forms shall be treated as confidential.

AUTH: 47-1-105, 47-1-111, MCA

IMP: 47-1-105, 47-1-111, MCA

Subchapters 4 and 5 reserved

## Subchapter 6

## Compensation for Contracted Attorneys and Nonattorneys

2.69.601 REASONABLE COMPENSATION (1) The commission shall meet at least biannually to review and approve the compensation rates based on criteria the commission deems appropriate.

(2) The commission shall determine appropriate compensation rates for:

(a) contract attorneys; and  
(b) others who provide services related to the provision of public defender services.

(3) Any contracts for attorney or related services shall use these approved rates of compensation.

AUTH: 47-1-105, 47-1-216, MCA

IMP: 47-1-105, 47-1-216, MCA

**Office of the State Public Defender  
Administrative Policies**

<b>Subject: Determination of Indigency</b>	<b>Policy No.:</b>
<b>Title 47</b>	<b>Pages: 1</b>
<b>Section:1-111</b>	<b>Revision Date:</b>
<b>Effective Date: 7-1-06</b>	<b>Effective Date:</b>

## **1.0 POLICY**

- 1.1** The Office of the State Public Defender (hereinafter State Office) shall prepare forms to capture financial information from an applicant for public defender services.
- 1.2** The State Office shall distribute the forms to courthouses, jails, and other venues determined appropriate by the State Office.
- 1.3** The applicant will complete the forms in accordance with instructions provided on the forms and forward them to the appropriate regional office.
- 1.4** The staff of the regional office shall review an applicant's forms and determine whether, based on the provisions of 47-1-111, MCA, an applicant is indigent and qualifies for public defender services. The applicant will be notified of this determination, regardless of outcome.
- 1.5** All information collected on the forms shall be treated as confidential.

## **2.0 CLOSING**

Questions about this policy should be directed to State Office at the following address:

Office of the State Public Defender  
Administrative Services  
44 West Park  
Butte, MT 59701  
Phone 406-496-6080

## Office of the State Public Defender Administrative Policies

<b>Subject: Contract Counsel - Civil and Criminal Cases</b>	<b>Policy No.:</b>
<b>Title 47</b>	<b>Pages: 2</b>
<b>Section:1-216</b>	<b>Revision Date:</b>
<b>Effective Date: 7-1-06</b>	<b>Effective Date:</b>

### 1.0 POLICY

**1.1** The Office of the State Public Defender (hereinafter State Office) will directly pay or reimburse costs related to counsel providing services pursuant to a public defender indigent defense contract in civil and criminal matters as directed by statute.

**1.2** The allowable expenses will be determined by the Montana Public Defender Commission.

**1.3** The rate paid for services will be determined by the Montana Public Defender Commission.

### 2.0 CONTRACTED COUNSEL -- CIVIL CASES

#### 2.1 CHILD ABUSE AND NEGLECT PROCEEDINGS

In child abuse and neglect proceedings held pursuant to Title 41, chapter 3, part 4 or 6, the following are state office costs:

- a. Expenses for contracted counsel for the youth;
- b. Expenses for contracted counsel for the parent, guardian or other person having legal custody of the youth.

#### 2.2 INVOLUNTARY COMMITMENT PROCEEDINGS

In involuntary commitment proceedings held pursuant to Title 53, chapter 21, the following are state office costs:

- a. Expenses for contracted counsel for the person subject to the commitment proceedings; and
- b. Any other expenses placed upon the state office by Title 47.

#### 2.3 YOUTH COURT PROCEEDINGS

In proceedings held pursuant to the Montana Youth Court Act, Title 41, chapter 5, the following are state office costs:

- a. Expenses for contracted counsel for the youth;
- b. Any other expenses placed upon the state office by Title 47 and Title 41, chapter 5.

### 3.0 CONTRACTED COUNSEL -- CRIMINAL CASES

Pursuant to Title 47 the state office shall pay for contracted counsel in district court, justice court, city and municipal court criminal cases.

### 4.0 DIRECT PAYMENTS

- a. Pursuant to title 47, the state office shall directly pay contracted counsel.

### 5.0 PAYMENT AND PROCEDURES

Contracted counsel shall provide said services at the rate set by the Commission. It is understood by the contracted counsel that the services provided will be supervised by their Regional Deputy Public Defender and the State Office.

Commencing July 1, 2006 the State Office will directly pay for public defender services rendered and for any additional preapproved expenses, e.g. witnesses, experts. Contracted counsel shall submit an itemized claim on the standard payment form provided by the State Office. This form and accompanying instructions will be posted to the Office's web site at [www.publicdefender@mt.gov](http://www.publicdefender@mt.gov) on or before July 1, 2006. Hourly time shall be broken down into six minute increments. Each form **must** contain the case number **assigned** by the Regional Office. Said form shall be submitted to the supervising Regional Deputy Public Defender for review, who shall within five (5) days review and forward the claim to the State Office. The State Office will review, approve and pay said claim within thirty (30) days of receipt of the same. Payment may be delayed if the claims are returned for corrections, clarification or for failure to include the **assigned** case number.

### 6.0 LIMITATIONS

The following costs are **not** state costs:

- a. Expenses incurred by agents of the department of fish, wildlife and parks or agents of the department of justice, when prosecuting a charge.

### 7.0 CLOSING

Questions about this policy should be directed to State Office at the following address:

Office of the State Public Defender  
Administrative Services  
44 West Park  
Butte, MT 59701  
Phone 406-496-6080

## MEMORANDUM OF UNDERSTANDING

The Office of the State Public Defender (OPD) intends to provide public defender services by contracting with those various private practitioners who have provided a summary of their education and experience.

The undersigned attorney acknowledges that he/she has read the Standards of Counsel Representing Individuals Pursuant to the Montana Public Defender Act (currently posted on the OPD website) and that he/she will abide by said Standards.

The undersigned submits that he/she is qualified to provide effective assistance of counsel in the following cases:

1. Type of case. (Please **initial** one or more)

Felony \_\_\_\_\_

Misdemeanor \_\_\_\_\_

Post-Conviction Proceeding \_\_\_\_\_

Child Abuse and Neglect \_\_\_\_\_

Involuntary Commitment:

Mental \_\_\_\_\_

Adult \_\_\_\_\_

Minor \_\_\_\_\_

DD \_\_\_\_\_

Alcohol \_\_\_\_\_

Youth Court \_\_\_\_\_

Guardianship/ Conservatorship Proceeding \_\_\_\_\_

2. Court/County. (Please indicate one or more)

District Court \_\_\_\_\_

Specify County or Counties:

Justice Court \_\_\_\_\_

3. Court/City. (Please indicate one or more)

Municipal Court \_\_\_\_\_

Specify City or Cities:

City Court \_\_\_\_\_

It is understood and agreed between the undersigned and OPD that OPD is not obligated to assign any specific number of cases to the undersigned, nor is the undersigned obligated to accept any case offered for assignment. Cases will be assigned by your Regional Deputy Public Defender (RDPD) in accordance with your qualifications as outlined above and the quality of work performed. Your RDPD shall supervise and evaluate the performance of your service, as well as monitor your caseload. The type and number of cases assigned to you will be determined by your qualifications as set forth above, your performance and by your overall caseload which shall include the amount of private practice engaged in outside this agreement. Your RDPD shall establish a reporting protocol on all cases assigned and by signing this Memorandum you are agreeing to abide by

said protocol.

It is understood and agreed that in cases involving conflicts, the RDPD will advise the Conflict Coordinator (CC) who will assign conflict cases. Said assignments will be made from the same pool of attorneys who have signed this agreement. The CC shall assign, supervise, evaluate, and monitor those conflict cases in the same manner as the RDPD.

It is understood that OPD has full time support services available, such as paralegal and investigator services, and it is agreed by the undersigned that he/she will have access to the same and will use the same whenever practical and possible.

It is understood and agreed that the undersigned shall provide public defender services at the rate of \$60.00 per hour for attorney work time and travel. Additionally, said attorney shall be entitled to claim mileage for services rendered outside a fifteen (15) mile radius of their principal place of business. The undersigned shall also be entitled to claim the sum of \$25.00 per month as a stipend to help defray office costs. OPD will not be responsible for payment of any office costs, i.e., telephone, copying, fax or postage expenses over the aforementioned stipend unless pre-approved by the RDPD or CC. It is further understood and agreed that all costs exceeding \$100.00, i.e., experts, witnesses, transcripts, etc. **must** be pre-approved by the RDPD or CC. All pre-approved contracted professional services must be invoiced by said professional directly to OPD.

It is understood and agreed that commencing on July 1, 2006 OPD will pay for all public defender services rendered on and after that date. It is further understood and agreed that the undersigned shall submit an itemized claim on the Contracted Attorney Claim form provided by OPD. This form and accompanying instructions are posted to OPD's web site at [www.publicdefender.mt.gov](http://www.publicdefender.mt.gov). Hourly rates shall be broken down into units of 1/10<sup>th</sup>/hr. Each form **must** contain the case number as **assigned** by OPD. Said form shall be supported with daily case logs and submitted to your RDPD for review, who shall within five (5) days review and forward the claim to the State Office. The State Office will review, approve and pay said claim within thirty (30) days of receipt by the RDPD or CC. It is understood that payment may be delayed if the claims are returned for corrections, clarification or for failure to include the **assigned** case number. Claims for attorney services rendered in conflict cases must be submitted to the CC who will review and forward to the State Office for payment as set forth above.

The undersigned agrees to complete twenty hours of continuing legal education within each calendar year in courses relating to public defender practice or representing persons whose liberty is at risk as a result of state-initiated proceedings, from courses offered or approved by OPD. The undersigned further agrees to comply with all other training requirements established by OPD's Training Coordinator.

This agreement shall be for a term of one (1) year. Upon the termination of said term, this agreement may be modified or extended for a like period by agreement, or terminated by either party here



Finally, it is understood and agreed that this Memorandum of Understanding may be terminated by OPD if it is determined that the undersigned is not providing effective assistance of counsel or that claims billed by the undersigned are consistently not in conformity with other providers.

My signature below indicates my acceptance of the above stated terms and conditions.

\_\_\_\_\_  
Name (Please Print)

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone No.

\_\_\_\_\_  
Email Address

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Approved by:

\_\_\_\_\_  
Lawrence A. Murphy  
Contract Manager

\_\_\_\_\_  
Date

OFFICE OF THE STATE PUBLIC DEFENDER  
 ACTUAL EXPENDITURES JULY 1, 2005 - JUNE 16, 2006 WITH ESTIMATES FOR FYE

	Personal Services	Operating Costs	Total Costs
<b>CENTRAL OFFICE:</b>			
Commission	\$ 5,468	\$ 35,058	\$ 40,526
Chief Public Defender	83,209	15,352	98,561
Administrative Director	120,999	123,200	244,199
Training Coordinator	26,873	9,608	36,481
Contract Manager	10,838	2,949	13,787
Human Resources	2,371	502	2,873
<b>TOTAL CENTRAL OFFICE</b>	<b>\$ 249,758</b>	<b>\$ 186,669</b>	<b>\$ 436,427</b>
<b>REGIONS:</b>			
Kalispell	\$ 4,646	\$ 124	\$ 4,770
Missoula	3,295	1,629	4,924
Great Falls	1,581	200	1,781
Helena	1,849	479	2,328
Butte	2,808	301	3,109
Havre	4,336	-	4,336
Lewistown	4,771	531	5,302
Bozeman	1,594		1,594
Billings	1,878	458	2,336
Glendive	2,186	212	2,398
Miles City	2,051	286	2,337
<b>TOTAL REGIONS</b>	<b>\$ 30,995</b>	<b>\$ 4,220</b>	<b>\$ 35,215</b>
<b>APPELLATE DEFENDER</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>
<b>TOTAL</b>	<b>\$ 280,753</b>	<b>\$ 190,889</b>	<b>\$ 471,642</b>
<b>1ST ESTIMATE</b>	<b>\$ 90,000</b>	<b>\$ 47,153</b>	<b>\$ 137,153</b>
<b>GRAND TOTAL (ESTIMATE)</b>	<b>\$ 370,753</b>	<b>\$ 238,042</b>	<b>\$ 608,795</b>
<b>BUDGET</b>	<b>\$ 320,687</b>	<b>\$ 207,042</b>	<b>\$ 527,729</b>
<b>VARIANCE (OVER) UNDER</b>	<b>\$ 50,066</b>	<b>\$ 31,000</b>	<b>\$ 81,066</b>
<b>2ND ESTIMATE</b>	<b>\$ 90,000</b>	<b>\$ 297,153</b>	<b>\$ 387,153</b>
<b>GRAND TOTAL (ESTIMATE)</b>	<b>\$ 370,753</b>	<b>\$ 488,042</b>	<b>\$ 858,795</b>
<b>BUDGET</b>	<b>\$ 320,687</b>	<b>\$ 207,042</b>	<b>\$ 527,729</b>
<b>VARIANCE (OVER) UNDER</b>	<b>\$ 50,066</b>	<b>\$ 281,000</b>	<b>\$ 331,066</b>
<b>FULL TIME EQUIVALENTS</b>			
ESTIMATE	5.50		
BUDGET	4.80		
<b>VARIANCE (OVER) UNDER</b>	<b>0.70</b>		